

ARKANSAS SUPREME COURT

No. CR 07-417

CALVIN LEE MILLER, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 31, 2007

PRO SE MOTION FOR EXTENSION OF
TIME [CIRCUIT COURT OF BRADLEY
COUNTY, CR 2006-27, CR 2006-37,
HON. SAM POPE, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Calvin Lee Miller, Jr., appellant herein, entered a plea of guilty to delivery of cocaine in Bradley County Circuit Court, Case Number CR 2006-27, and to possession of cocaine with intent to deliver in Case Number CR 2006-37. Appellant was sentenced to 120 months' incarceration and 120 months' suspended imposition of sentence in both cases, with the sentences to run concurrently. The judgment and commitment order reflecting these sentences was entered on October 30, 2006.

Subsequently, appellant filed in the trial court a motion to correct a clerical mistake in his commitment order. The trial court treated the motion as one pursuant to Ark. R. Crim. P. 37.1, making the motion timely filed. The trial court denied the motion, and appellant lodged a timely pro se appeal here of that order.¹

Now before us is appellant's pro se motion for extension of time. We need not consider the motion as it is apparent that appellant could not prevail if the appeal was permitted to go forward. This

¹We note that appellant filed two motions setting forth the same argument. The trial court denied each motion, and appellant filed a notice of appeal as to the first order only.

court has held that an appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

The first motion to correct clerical error was filed in the trial court on December 14, 2006. Therein, appellant maintained in a conclusory manner that the judgment and commitment order in his two criminal cases did not reflect that the sentences were to commence from the date of his arrest. He maintained that as a result, he should have received 230 days' credit to his sentences.

The second motion to correct clerical error, filed in the trial court on January 25, 2007, contained further explanation of appellant's argument. Without supporting documentation, appellant argued that at the time he was sentenced in CR 2006-27 and CR 2006-37, he was already in the custody of the Arkansas Department of Correction (hereinafter, "ADC") pursuant to a parole revocation. According to appellant, the charges filed against him in the instant matter in Bradley County caused revocation of parole he received in a separate criminal case in Pulaski County, CR 99-631. He claimed that he was entitled to credit in the instant matters in the Bradley County cases, CR 2006-27 and CR 2006-37, for time served in the custody of ADC for parole violation of his Pulaski County case, CR 99-631. He requested that the judgments entered in Bradley County be entered "nunc pro tunc" to correct this alleged error.

An appellant bears the burden of producing a record that demonstrates error. *Miles v. State*, 350 Ark. 243, 85 S.W.3d 907 (2002). Pro se appellants receive no special consideration on appeal. *Elliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000). Determining the intention of the trial court is derived from the judgment and the record. *Lewis v. State*, 336 Ark. 469, 986 S.W.2d 95 (1999).

Here, there is no basis to support appellant's claim that in the present matters in Bradley County

he is entitled to credit for time served in a criminal case in a different county, here Pulaski. The judgments and the transcripts of the plea agreement hearing are devoid of any such arrangement or promise. As appellant failed to demonstrate that a valid basis existed for granting his motion, we cannot say that the trial court erred in denying his motion.

Appeal dismissed; motion moot.